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1 - Sinkhole bill curbing salt dome storage caverns near manmade disasters fails in Louisiana Senate, NOLA, 5/7/13
http://www.nola.com/politics/index.ssf/2013/05/bill_curbing.html

Legislation that would have barred permits for hydrocarbon storage in state-owned bodies of water near manmade disasters failed on the Senate floor Tuesday.

2 - Sinkhole burps again, site work remains halted, BRADV, 5/7/13
<http://theadvocate.com/news/5913363-123/sinkhole-burps-again-site-work>

The Assumption Parish sinkhole near the Bayou Corne community produced one of its periodic burps early Tuesday after several days of increased seismic activity suggested another might be coming, parish officials said

3 - Construction is to begin on permanent gate, pump structures on New Orleans drainage canals, NOLA, 5/7/13
http://www.nola.com/environment/index.ssf/2013/05/army_corps_of_engineers_clears.html#incart_river

The Army Corps of Engineers has approved the start of construction of the \$614.8 million permanent canal closures and pump stations at the mouths of the 17th Street, Orleans Avenue and London Avenue canals in New Orleans, after no objections were filed to the corps' April 17 award of the construction contract to PCCP Constructors.

4 - Disappearing Dilbit: How Much Oil Was Released in 2010 Pipeline Spill?, Bloomberg, 5/7/13
<http://www.bloomberg.com/news/2013-05-07/disappearing-dilbit-how-much-oil-was-released-in-2010-pipeline-spill-.html>

A key piece of data related to the biggest tar sands oil spill in U.S. history has disappeared from the Environmental Protection Agency's website, adding to confusion about the size of the spill and possibly reducing the fine that the company responsible for the accident would be required to pay.

5 - Authorities rule out some potential causes of Texas blast, CNN, 5/7/13
<http://www.cnn.com/2013/05/06/us/texas-explosion>

Investigators have ruled out four potential causes for the fire that led to an explosion at a fertilizer distribution facility in West, Texas, the state fire marshal's office said Monday in a statement.

6 - Lawsuits filed against West Fertilizer. KXAN, 5/7/13
<http://www.kxan.com/dpp/news/texas/lawsuits-filed-against-west-fertilizer>

Two lawsuits accusing the owner of West Fertilizer Co. of negligence have been filed in connection with the explosion that killed at least 14 people in the small town north of Waco.

7 - Climate Change: States 'Coerced' to Add Greenhouse Gases To Implementation Plans, Texas Tells Court, BNA, 5/8/13
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=31006795&vname=dennotallissues&jd=a0d8h6r7w6&split=0

An Environmental Protection Agency rule issued in 2010 giving several states 21 days to revise their air pollution plans to include greenhouse gases or be subject to a federal plan is "coercive" and should be vacated, an attorney for Texas told a federal appellate court May 7 (Texas v. EPA, D.C. Cir., No. 10-1425, oral arguments 5/7/13; Utility Air Regulatory Group v. EPA, D.C. Cir., No. 11-1037, oral arguments 5/7/13).

8 - EPA to study fracking water use at the local level, EENEWS, 5/8/13

<http://www.eenews.net/energywire/2013/05/08/3>

U.S. EPA researchers looking at hydraulic fracturing's effect on water supplies say they plan to examine it more at the local level than from a national perspective.

9 - API asserts EPA gasoline rule will raise costs, CO2 emissions, EENEWS, 5/8/13

<http://www.eenews.net/climatewire/2013/05/08/4>

The oil and gas industry launched a new complaint yesterday against U.S. EPA's proposed regulation to reduce the sulfur content of gasoline fuel by two-thirds. In a letter sent to the agency, the American Petroleum Institute (API) argued for greater transparency regarding the controversial "Tier 3" rule.

10 - Facing Hurdles, Backers Step Up Push To Maintain SRF Funds In FY14 , Inside EPA, 5/7/13

<http://insideepa.com/201305072433580/EPA-Daily-News/Daily-News/facing-hurdles-backers-step-up-push-to-maintain-srf-funds-in-fy14/menu-id-95.html>

Congressional and other supporters of EPA's water infrastructure loan programs are urging appropriators to maintain level funding for the programs in fiscal year 2014, and prevent rescissions of unobligated funds, after EPA proposed cutting the funds and a key appropriator downplayed the relative benefits of the funding increase being sought.



Everything New Orleans

Sinkhole bill curbing salt dome storage caverns near manmade disasters fails in Louisiana Senate

[Sheila V Kumar, NOLA.com | The Times-Picayune](#) By [Sheila V Kumar, NOLA.com | The Times-Picayune](#)

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on May 07, 2013 at 8:49 PM, updated May 07, 2013 at 9:31 PM

[Legislation that would have barred permits for hydrocarbon storage in state-owned bodies of water](#) near manmade disasters failed on the Senate floor Tuesday. [Senate Bill 200](#) by Sen. Fred Mills, R-Breaux Bridge, would have prohibited new permits to store hydrocarbons, such as natural gas, carbon dioxide and hazardous waste, where the underlying salt rock has failed because of human error.

Mills said the bill specifically targets Lake Peigneur in Iberia Parish, a government-held body of water sitting atop a salt dome that is being used to store crude oil and natural gas.

Mills said two extremely deep caverns have been drilled into the Jefferson salt dome, an underground mountain of salt buried beneath the lake, and a company is pushing to drill more caverns into the dome.

The legislation was written in light of a 13-acre sinkhole in Assumption Parish that experts believe was caused by a failed brine cavern that partially collapsed because it was drilled too close to the Napoleonville salt dome's western edge. The resulting slurry hole has forced the evacuation of 350 residents in the nearby towns of Bayou Corne and Grand Bayou.

Mills said Lake Peigneur has been bubbling and foaming, so he wrote the bill hoping to prevent a similar situation from happening in his district. Residents in Bayou Corne had been reporting gas bubbles and tremors in the area for months before the sinkhole erupted last August.

Mills also pointed to the Jefferson Island salt mine collapse in 1980, where a drill bit punched through the top of the salt dome. The underground salt mine collapsed as lake water gushed into the mine, eroding salt pillars and draining Lake Peigneur.

The bill failed 15-20.

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Sinkhole burps again, site work remains halted

By DAVID J. MITCHELL

River Parishes bureau

The Assumption Parish sinkhole near the Bayou Corne community produced one of its periodic burps early Tuesday after several days of increased seismic activity suggested another might be coming, parish officials said.

Scientists working on the sinkhole recorded a certain kind of seismic signal known as a “very long period” event at 3:24 a.m. Tuesday, officials said in a brief blog post. “And it is likely that this is when the burp happened,” officials said.

Seismic activity has waxed and waned for more than nine months around the swampland sinkhole between the Bayou Corne and Grand Bayou communities as the hole has continued to grow and find its final shape, at times expelling gas, crude oil and vegetation. Residents of both communities were ordered to evacuate for their own safety when the sinkhole was discovered Aug. 3.

Scientists think the sinkhole is connected to deeper strata where oil and gas have been unleashed by the failure of an underground Texas Brine Co. salt dome cavern that is in the process of being filled with rock.

Known as VLPs, the very long period events are a type of seismic activity that can last as long as 15 minutes and indicate gas or fluid movement in the rock under the sinkhole.

John Boudreaux, director of the parish Office of Homeland Security and Emergency Preparedness, said Tuesday scientists are checking video recorders at the sinkhole to see if gas escaped during the burp or if water in the sinkhole moved.

The burps, which normally involve a release of gas and debris, sometimes also create tidal-like motions in the water at the surface of the normally tranquil 15.1-acre sinkhole.

Boudreaux said no edge collapses, or slough-ins, have been noted around the sides of the sinkhole and little new debris has surfaced.

On Sunday, parish and state Office of Conservation officials raised the response level to the sinkhole to the highest stage after micro-earthquakes reached a frequency that in the past indicated an imminent edge collapse or burp — more than 50 micro-quakes per day.

Micro-earthquakes are an indication of breaking rock underground and consist of brief events sometimes known as sharp tremors.

By Monday, Boudreaux said, both the micro-earthquakes and very long period events had reached daily frequencies that pointed to an imminent event.

Neither kind of seismic event is normally felt at the surface by people and haven’t been reported in this latest occurrence, Boudreaux said.

He said Tuesday morning that work inside the 71-acre area contained by the berm surrounding the sinkhole remains stopped, as it has since Sunday.

Increased seismic activity had begun limiting some work on the sinkhole starting on May 1, Boudreaux has said.

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Everything New Orleans

Construction is to begin on permanent gate, pump structures on New Orleans drainage canals

[Mark Schleifstein, NOLA.com | The Times-Picayune](#) By [Mark Schleifstein, NOLA.com | The Times-Picayune](#)
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on May 06, 2013 at 6:39 PM, updated May 06, 2013 at 6:56 PM

The [Army Corps of Engineers](#) has approved the start of construction of the \$614.8 million permanent canal closures and pump stations at the mouths of the 17th Street, Orleans Avenue and London Avenue canals in New Orleans, after no objections were filed to the corps' April 17 award of the construction contract to PCCP Constructors. The structures represent the last large construction contract involving rebuilding the levee system surrounding New Orleans in the aftermath of Hurricane Katrina.

The corps released several renderings provided by PCCP Constructors that show how the structures will look and their proposed locations at the canal entrances to Lake Pontchartrain.

"Our site plans and layouts have maximized the distance from PCCP facilities to adjacent residences, which minimizes visual and acoustic impacts," says a written discussion accompanying the renderings.

"The enhanced architectural design of the pump station, generator building and auxiliary building reflects historic drainage pump station designs and building materials, such as brick facades and green patina copper roofing," said the handout. "The removal of roof-mounted ventilation equipment, significantly reduced building heights, enhanced screening walls, modified site layouts and augmented landscaping materials greatly reduce facility visibility to adjacent residences"

The contractor also tried to reduce vibrations and noise in its design.

"Reduced noise impact at the property lines is achieved from the strategic reorientation of generator buildings as well as improved acoustic treatments such as double walls with noise reducing panels, low air velocity remote radiators, and extreme grade generator engine silencers," according to the handout.

"Additional hard and soft measures such as sound-attenuating masonry walls and landscaping also provide acoustic benefits."

The new structures will be designed to block storm surges caused by a hurricane with a 1 percent chance of occurring every year, also known as a 100-year storm, from entering the canals. The stations must also be able to pump rainwater from each canal into the lake at a rate that will keep the water levels in the canals low enough to avoid overtopping or damage to the floodwalls. The pumping requirement assumes that the Sewerage & Water Board's pumping stations would be operating at full capacity.

The contract requires that when the surge closures are operated during storms, the pumps can move 12,500 cubic feet per second of water from the 17th Street Canal into Lake Pontchartrain; 2,700 cubic feet per second from the Orleans Avenue Canal; and 9,000 cubic feet per second from the London Avenue Canal.

The stations also will be designed to be reconfigured if the city decides to abandon existing pumps that move water from the southern ends of the canals to the new stations, which would also entail deepening the canals to allow gravity to move the water toward the lake. According to the company, no major reconstruction of the buildings will be required if that alternative is adopted.

Construction is expected to begin this fall by the joint venture, whose partners include Kiewit Louisiana Co., Traylor Bros. Inc., and the M. R. Pittman Group LLC. The contract requires the stations to be completed within 44 months after the notice to proceed with construction is issued, which would be January 2017.

The group will begin development of a construction schedule and will be able to conduct surveys of the canal channels before construction begins.

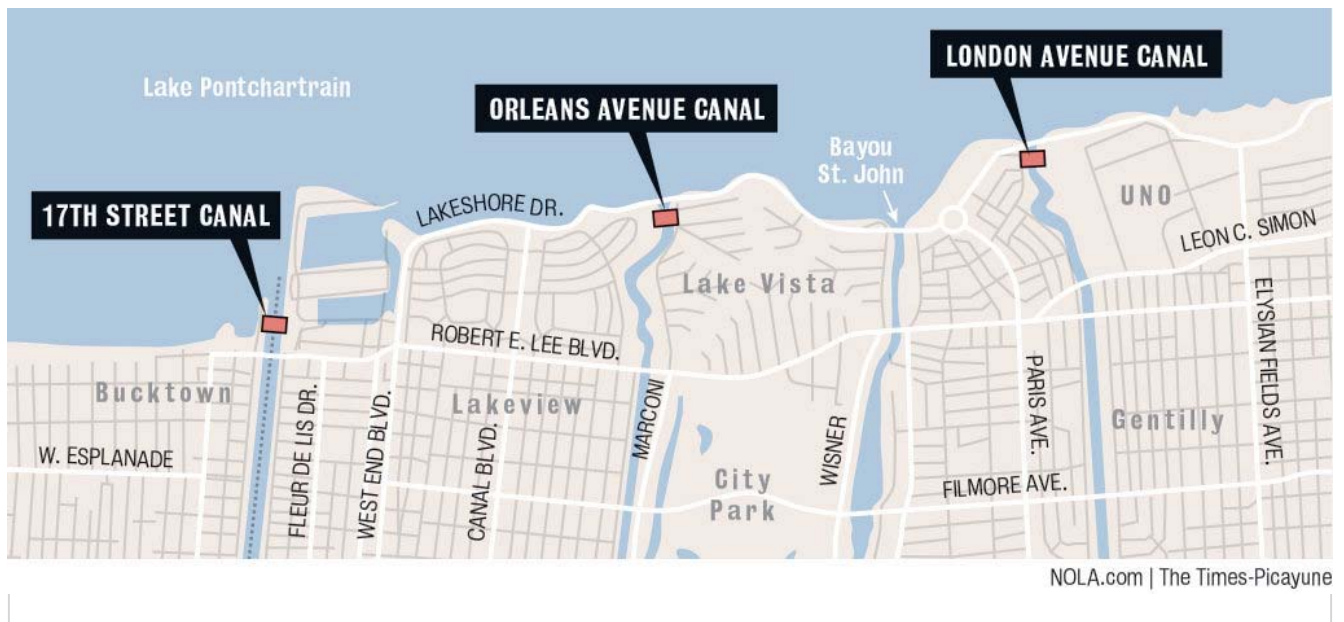
Interim gates and pump stations at the ends of the three canals will continue to provide protection from 100-year surges and rainfall entering the canals when the gates are closed. The temporary structures have been used four times since they were installed in 2006, including during Hurricane Isaac last August.

The new contract is a reduction from the \$629.5 million that the same joint venture bid in September 2012. The Corps of Engineers declared PCCP Constructors the winner then, but that award was protested by losing bidders Bechtel Infrastructure Corp. and CBY Design Builders in challenges filed with the Congressional Government Accountability Office.

The corps then agreed to reconsider its award to PCCP, and created a "corrective action procedure" to address issues raised by the challenges. The September award to PCCP came after a 2011 challenge by PCCP and Bechtel to the corps' first awarding of the contract to CBY in April 2011. CBY had bid \$675 million.

CBY and Bechtel had 10 days to appeal this latest corps contract decision.

In awarding the contract, the corps required the winning bidder to spend 22 percent of the contract price on small business subcontractors, including a minimum 5 percent to officially-designated small disadvantaged businesses, 5 percent to women-owned small businesses, 3 percent to HUBZone small businesses (which are aimed at financially disadvantaged business areas), and 3 percent to service-disabled veteran-owned small businesses.



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Disappearing Dilbit: How Much Oil Was Released in 2010 Pipeline Spill?

By Lisa Song - May 7, 2013

InsideClimateNews.org — A key piece of data related to the biggest tar sands oil spill in U.S. history has disappeared from the Environmental Protection Agency's website, adding to confusion about the size of the spill and possibly reducing the fine that the company responsible for the accident would be required to pay.

The July 2010 accident on an Enbridge Inc. pipeline dumped thousands of barrels of Canadian dilbit into the Kalamazoo River and surrounding wetlands. But almost three years and two federal investigations later, one of the most important questions about the spill remains unanswered: Exactly how much oil spilled from the pipeline?

The same question is being asked about a more recent dilbit spill—a March 29 accident on ExxonMobil's Pegasus pipeline in Mayflower, Ark. Estimates for that spill, which is still being cleaned up, have risen from 80,000 gallons to more than 200,000 gallons.

Determining the size of an oil spill is important, because every barrel of oil that reaches a navigable waterway triggers a statutory fine of \$1,100 per barrel under the Clean Water Act. The fine rises to \$4,300 per barrel if a company is proven to have acted with gross negligence.

In the case of the Michigan spill, the EPA has posted numerous updates [on its website](#) about the amount of oil recovered from the site. It was 766,000 gallons in [March 2011](#), then grew to 1,148,229 gallons in [June 2012](#). (There are 42 gallons in a barrel.)

But speculation about the magnitude of the spill took a new twist sometime in March, when the EPA's website for the accident stopped showing how much oil has been collected at the site—1,149,460 gallons at last count. Web archives show that number was deleted between [March 9](#) and [March 27](#).

The only spill estimate remaining on the website is another, much lower number that has also been tracked since soon after the spill: The amount of oil—843,000 gallons—that Enbridge says was discharged from the line.

In other words, 36 percent more oil has been recovered than was spilled.

In a series of emails with InsideClimate News, an EPA spokesman did not explain why the larger number had been removed or address the discrepancy between the two numbers.

"The estimated oil recovered remains at 1,149,000" gallons, said the spokesman, who requested anonymity.

When questioned about the discrepancy between the numbers, he said the agency "does not comment on ongoing investigations."

Former EPA official Al Armendariz offered two explanations of why the agency might have dropped the larger spill estimate from its website. "Either the number was changed by a very deliberate decision and it's exactly what they want for a legalistic reason. Or it could be lack of communication between the staff [at EPA]. That wouldn't surprise me either."

Armendariz was regional administrator of the EPA's Region 6 Office from 2009 to 2012. He resigned last year and now works for the Sierra Club's Beyond Coal campaign.

Two federal investigations of the Marshall spill have already been conducted, but neither examined the volume of oil spilled. In July 2012, the National Transportation Safety Board concluded that the accident was caused by a "complete breakdown of safety" at Enbridge. A separate investigation by the U.S. Department of Transportation fined Enbridge \$3.7 million for violating 22 pipeline safety regulations.

The EPA is conducting its own investigation of the spill, and its findings will determine whether Enbridge will be fined under the Clean Water Act. On March 15, the agency ordered Enbridge to dredge several sections of the riverbed where oil continues to accumulate.

If Enbridge is fined \$1,100 per barrel, the company would pay \$22 million for an 843,000-gallon spill. The fine would increase to \$29 million for a 1.1 million-gallon spill.

If the company is fined \$4,300 a barrel, it would pay \$86 million for an 843,000-gallon spill and \$113 million for 1.1 million gallons.

Armendariz said the difference between paying fines for an 843,000-gallon spill and a 1.1 million-gallon spill probably wouldn't be significant for a major company like Enbridge, Canada's largest transporter of crude oil.

But Armendariz also said that "oil companies are in the business of making money and they won't write a check for oil they don't think they spilled...The government should expect that Enbridge will try to use an estimate that is most favorable to them."

Enbridge spokesman Larry Springer said the 1.1 million figure exaggerates the size of the spill, because it includes substances other than oil.

It "is a culmination of everything collected during cleanup of the Kalamazoo River and [Talmadge] Creek – the product released from Line 6B, non-petroleum organic materials, and other petroleum-based products in the river (hydrocarbons)," Springer said in an email. "There are a number of conservative factors involved in calculating this number that we believe contribute to an overestimation of the total amount collected."

The EPA spokesman also said the larger number includes "oil, oily water, soil and debris containing oil."

But spreadsheets and other documents that InsideClimate News obtained through the Freedom of Information Act show that the 1.1 million-gallon estimate refers to the amount of oil after it has been separated from debris.

The [spreadsheets](#), which Enbridge provided to the EPA in regular updates on the recovery, contains separate estimates for the volume of oily water, soil and debris. Another column is reserved for the oil alone, expressed in gallons. That column shows the 1.1 million gallon estimate.

According to other documents, these numbers were derived by analyzing sediment cores and other samples collected during the cleanup. The documents also indicate that the methods used to determine these volumes were at least partially developed by the EPA.

For instance, an [EPA directive from Nov. 20, 2012](#), ordered Enbridge "to complete the quantification of submerged oil in the sections of the Kalamazoo River affected by the Enbridge Line 6B oil spill." The directive notes that the EPA and Enbridge "have been developing methodologies for quantification of the submerged oil" since summer of 2012.

Other documents describe quality assurance plans that are supposed to ensure that the data are gathered and analyzed using reliable scientific methods.

Neither the EPA and Enbridge responded to follow-up questions about the techniques used to obtain the 1.1 million gallon figure.

In response to InsideClimate News' questions, however, the EPA did address another discrepancy on its website.

Since at least Sept. 2010, the site had said that the spill discharged 819,000 gallons of oil, even though Enbridge's own engineers had increased that estimate to 843,000 gallons in Nov. 2010. The EPA spokesman acknowledged that the agency should have changed the estimate. The website was updated last week.

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Authorities rule out some potential causes of Texas blast

By CNN Staff

updated 10:46 AM EDT, Tue May 7, 2013

CNN.com

(CNN) -- Investigators have ruled out four potential causes for the fire that led to an [explosion at a fertilizer distribution facility in West, Texas](#), the state fire marshal's office said Monday in a statement.

Authorities think it was something other than weather, natural causes, anhydrous ammonium or ammonium nitrate in a rail car.

Officials also ruled out water from firefighters as a cause for the massive April 17 blast in which 14 people died.

The fire began in the fertilizer and seed building but authorities are still trying to figure out the exact spot, the statement said.

[Texas blast victims, in their families' words](#)



Obama consoles devastated Texas town



Reality star brings aid to West, Texas

The

investigation into the explosion will last longer than expected, the agency said. The probe was expected to be complete by May 10 but will extend another one to two weeks, the fire marshal's office said.

Scores of investigators have followed up on 237 leads into the explosion. At least 60 investigators have been on site each day and conducted 411 interviews in trying to determine how the fire started and what caused the explosion.

The blast happened about 20 minutes after the first report of a fire at the fertilizer facility. It registered on seismographs as a magnitude 2.1 earthquake and could be felt 50 miles away.

[Animals become symbols of hope in Texas town](#)

The explosion damaged numerous homes, a nursing home and the town's high school and middle school, all of which were built within a few hundred feet of the plant.

West Fertilizer Co., which operated the facility, had been cited by federal regulators twice since 2006.

In 2012, the Transportation Department's Pipeline and Hazardous Materials Safety Administration fined West Fertilizer \$5,250 for storing anhydrous ammonia in tanks that lacked the proper warning labels. The agency originally recommended a \$10,000 penalty, but it was reduced after the company took corrective action.

In 2006, the EPA fined the company \$2,300 to correct problems that included a failure to file a risk management program plan on time. The Texas Commission on Environmental Quality also investigated a complaint about the lingering smell of ammonia around the plant the same year.

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Lawsuits filed against West Fertilizer

Advertisement

Officials say rail car not cause of deadly blast

Updated: Tuesday, 23 Apr 2013, 5:15 PM CDT
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WEST, Texas (KXAN) - Two lawsuits accusing the owner of West Fertilizer Co. of negligence have been filed in connection with the explosion that killed at least 14 people in the small town north of Waco.

Both civil actions were filed in the McLennan County district court against Adair Grain Inc., which also does business as West Fertilizer. One of the lawsuits was jointly filed by several businesses and two churches in West and their insurance companies.

"The explosion and its aftermath caused severe damage to Plaintiff's insured's property and business," one lawsuit says. "Defendant's negligent acts of omission were the proximate cause of the explosion that resulted in damages to the Plaintiffs, including the destruction (of) real and personal property and lost profits."

The second suit was filed by Andrea Jones Gutierrez, a single mother who said her families belongings were destroyed in her apartment near the blast zone. She is seeking up to \$1 million for lost possessions and lost wages and benefits.

No cause for the blast that started with a fire at the plant on Wednesday night has been identified. Kelly Kisner of the State Fire Marshal's Office said Tuesday that a rail car near the blast site was not the cause. More likely, the fire and explosion were sparked by someone who was killed at the scene.

Local, federal and state authorities are still investigating. People whose homes are in the blast zone still had limited access to their property as of Tuesday.

Officials in West said the blast forged a crater 93 feet wide and 10 feet deep. It shook the ground like a small earthquake, officials said.



Source: Daily Environment Report: News Archive > 2013 > May > 05/08/2013 > News > Climate Change: States 'Coerced' to Add Greenhouse Gases To Implementation Plans, Texas Tells Court

89 DEN A-12

Climate Change

States 'Coerced' to Add Greenhouse Gases To Implementation Plans, Texas Tells Court



By Andrew Childers

An Environmental Protection Agency rule issued in 2010 giving several states 21 days to revise their air pollution plans to include greenhouse gases or be subject to a federal plan is "coercive" and should be vacated, an attorney for Texas told a federal appellate court May 7 (*Texas v. EPA*, D.C. Cir., No. 10-1425, *oral arguments* 5/7/13; *Utility Air Regulatory Group v. EPA*, D.C. Cir., No. 11-1037, *oral arguments* 5/7/13).

States were not given sufficient time to revise their state implementation plans to include greenhouse gases, and states such as Texas that refused to make the revisions were subject to federal implementation plans that saw EPA take over greenhouse gas permitting, David Rivkin, a partner at Baker & Hostetler LLP representing the state of Texas, told the U.S. Court of Appeals for the District of Columbia Circuit.

EPA's rule was the equivalent of "putting a gun to the head of the states" because industrial facilities faced a construction moratorium without the permits, he said.

The D.C. Circuit heard oral argument May 7 in two separate lawsuits challenging EPA's requirement that states revise the prevention of significant deterioration portions of their state implementation plans to include greenhouse gases (86 DEN A-4, 5/3/13).

In *Utility Air Regulatory Group v. EPA*, Texas, Wyoming, and power plant trade groups challenged a series of EPA rules requiring states to update their state implementation plans to include greenhouse gas permitting. The petitioners argued that EPA violated the Clean Air Act because it did not provide sufficient time for states to make the necessary revisions.

In *Texas v. EPA*, the state challenged EPA's 2010 finding that the state's implementation plan, originally approved in 1992, was deficient because it lacked a provision to include newly regulated pollutants such as greenhouse gases.

The cases were heard by Judges Judith W. Rogers, David S. Tatel, and Brett M. Kavanaugh.

States Lacked Time for Revisions

EPA did not give states sufficient time to make the necessary revisions to include greenhouse gas emissions as part of the prevention of significant deterioration permitting requirements, petitioners argued in *Utility Air Regulatory Group v. EPA*.

Prevention of significant deterioration requires new and modified industrial sources such as power plants and petroleum refineries to install updated pollution controls known as best available control technology when they expand or make modifications that increase emissions.

In a Dec. 13, 2010, "SIP call" rule, EPA required 13 states, including Texas and Wyoming, to revise

BN A Snapshot

Texas v. EPA, D.C. Cir., No. 10-1425, *oral arguments* 5/7/13; *Utility Air Regulatory Group v. EPA*, D.C. Cir., No. 11-1037, *oral arguments* 5/7/13

Key Development:

Texas and industry groups ask D.C. Circuit to overturn a series of EPA regulations that require them to include greenhouse gases in their SIPs.

Potential Impact:

The petitioners are asking D.C. Circuit to vacate EPA's rules and allow states up to three years to make the necessary revisions to their SIPs.

their implementation plans to include greenhouse gases. The rule established deadlines for each of the states to make the needed revisions ranging from Dec. 22, 2010, to Dec. 1, 2011 (75 Fed. Reg. 77,698). Sixteen days later, EPA issued a rule finding that Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming had failed to submit the required revisions to their implementation plans (75 Fed. Reg. 81,874). The agency then issued federal implementation plans Dec. 30, 2010, to cover greenhouse gas permitting in those states (75 Fed. Reg. 82,246).

EPA's action violated Section 110(a) of the Clean Air Act, which gives states three years to make necessary state implementation plan revisions, the states and power industry said. EPA's rule also violated Section 110(i) of the Clean Air Act, which is meant to be "a kind of SIP shield" that prevents the agency from arbitrarily requiring states to update their implementation plans, Rivkin said.

"EPA doesn't have unlimited SIP revising authority," he said.

Permitting Required by Statute, EPA Says

EPA argued the federal plans were necessary because Sections 165 and 167 of the Clean Air Act require the agency to apply prevention of significant deterioration permitting requirements to newly regulated pollutants such as greenhouse gases. The federal implementation plans were necessary to bridge that "temporary gap in states' permitting authority" while they revised their implementation plans, Madeline Fleisher, a Justice Department attorney representing EPA, said. No states' existing permitting authority was "extinguished" in the process, she said.

Wyoming is also asking the D.C. Circuit to vacate EPA's federal implementation plans. The state had to repeal laws preventing it from regulating greenhouse gases before it could update its state implementation plan, Assistant Attorney General Nancy Vehr said. Wyoming submitted its revised state implementation plan to EPA for approval in March, but the agency has not yet approved the plan.

Industries in Wyoming are in a cumbersome "dual permitting system," in which they apply to the state for permits for their criteria pollutant emissions and to EPA for their greenhouse gas permits, she said. Because the two permitting tracks move at different speeds, that often leaves industries waiting for approval from EPA before they can begin construction, Vehr said. Only one power plant in Wyoming has received a greenhouse gas permit from EPA to date, she said.

Tatel Sees Ties to Greenhouse Gas Cases

Tatel repeatedly asked the petitioners whether they have standing to challenge EPA's greenhouse gas SIP call given D.C. Circuit's decision in *Coalition for Responsible Regulation v. EPA*. In that series of lawsuits, several industry groups and some states, including Texas, had challenged EPA's various greenhouse gas regulations. A D.C. Circuit panel, which included Tatel and Rogers, unanimously upheld EPA's rules (*Coalition for Responsible Regulation v. EPA* D.C. Cir., No. 09-1322, 12/20/12; 245 DEN A-1, 12/21/12).

As part of the decision, the D.C. Circuit said states such as Texas lacked standing to challenge EPA's greenhouse gas tailoring rule, which limited greenhouse gas permitting to only the largest industrial sources, because the rule was intended to ease state permitting burdens.

Tatel said he saw parallels between the decision and EPA's federal implementation plans, which ensured industrial sources would be able to obtain necessary greenhouse gas permits while states made required revisions to their implementation plans.

However, Rivkin said D.C. Circuit's decision in *Coalition for Responsible Regulation v. EPA* "had nothing to do with the timeline issue" being challenged in *Utility Air Regulatory Group v. EPA*.

Texas Challenges SIP Deficiency

In *Texas v. EPA*, the state challenged EPA's decision to retroactively grant only partial approval of the state's implementation plan because it lacked provisions to include newly regulated pollutants such as greenhouse gases.

EPA partially withdrew its approval of Texas's implementation plan in 2010 and 2011 using its authority under Section 110(k)(6), which allows the agency to make corrections to approved plans (75 Fed. Reg. 82,430, 76 Fed. Reg. 25,178; 85 DEN A-1, 5/3/11).

The partial approval means EPA is the greenhouse gas permitting authority for the state, while Texas

continues to issue prevention of significant deterioration permits for other pollutants, such as sulfur dioxide and nitrogen oxides.

Mark DeLaquil, a partner at Baker & Hostetler LLP representing Texas, argued EPA withdrew its approval based on its changing policies and not any deficiency with the plan itself.

"There actually has to be an error in the specific action at issue," he said. "It's not because EPA changes its mind" about regulating greenhouse gases.

Instead, EPA should have allowed Texas to revise its implementation plan using the three year process outlined in Section 110(a) or the 18 month process under Section 110(k)(5).

DeLaquil compared EPA's decision to issue a federal plan for Texas to the Cross-State Air Pollution Rule. D.C. Circuit vacated the rule in August 2012 partially because EPA erroneously issued federal implementation plans when it should have allowed states the opportunity to issue state plans (*EME Homer City Generation LP v. EPA*, D.C. Cir., No. 11-1302, 8/21/12; 162 DEN A-1, 8/22/12).

Federal Plan Necessary for Permits

Fleisher said it was necessary for EPA to step in and issue greenhouse gas prevention of significant deterioration permits in Texas because the state "has declined to address that gap in any way." Texas accounts for nearly a quarter of all prevention of significant deterioration permits issued nationwide, she said.

However, Fleisher said EPA did not withdraw its approval of the Texas plan simply because the state refused to implement the greenhouse gas permitting requirements. She said "any pollutant that came down the line" could have triggered similar action by EPA.

"This is not EPA saying, 'We're changing our mind,' " she said. "This is EPA saying, 'We did it wrong the first time.' "

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THE POLITICS AND BUSINESS OF UNCONVENTIONAL ENERGY

3. HYDRAULIC FRACTURING:**EPA to study fracking water use at the local level**

Mike Soraghan, E&E reporter

Published: Wednesday, May 8, 2013

ARLINGTON, Va. -- U.S. EPA researchers looking at hydraulic fracturing's effect on water supplies say they plan to examine it more at the local level than from a national perspective.

They told a panel of scientists monitoring the study yesterday that fracking uses up a relatively minuscule portion of the nation's water supply. It can even be difficult to see what effect it has at the state level. But it can still have a big effect when it gets down to individual streams and water bodies.

"We want to take it to the headwaters," Stephen Kraemer of EPA's Office of Research and Development told the panel.

Kraemer was speaking to the agency's Science Advisory Board Hydraulic Fracturing Research Advisory Panel, which met at a hotel here yesterday to weigh in on the progress report the agency issued in December ([Greenwire](#), Dec. 21, 2012).

The fracking study was urged on the agency by the House Appropriations Committee when Democrats were in the majority, but it has faced delays and criticism from the start. Its prominence has grown as the shale drilling boom has spread out of Texas and Pennsylvania, bringing rigs to places that haven't seen petroleum production in generations.

The agency announced last month that it will take an extra six months to collect existing research ([EnergyWire](#), April 30). A final draft report is slated for late 2014.

The amount of water used in fracturing can vary considerably from place to place. EPA's Jennifer Orme-Zavaleta put up figures showing Colorado had twice as many frack jobs as Pennsylvania in 2010 but that Pennsylvania's wells required nearly 50 percent more water.

The EPA officials agreed with one reviewer who noted that water supply data can be more difficult to use at the local level, because there's more variability than on a national scale.

"That's the challenge," Kraemer said, "figuring out what is the appropriate scale for measuring impact."

The EPA researchers say they plan to use water volume data from the industry-backed FracFocus.org. But its value is limited, they said, by the fact that it goes back only to the beginning of 2011 and that the reports often don't make clear whether a well was fracked with fresh or recycled water.

A recent study by the Harvard Environmental Law Program criticized FracFocus as error-prone and "impenetrable," and said government agencies shouldn't be relying on it as a means of disclosure. The creators of the site responded that the study "fails to reflect the true capabilities of the FracFocus system" ([EnergyWire](#), April 24).

In response to another question from the panel, EPA officials said water data from the study would be made available in an electronic format so members of the public can analyze it.

A member of the panel from a shale drilling company said EPA officials should keep in mind that their study and their data will likely end up in the political debate about fracturing and shale drilling.

"External folks are going to use that information in the debate, whether it's for sound science or not," said Walter Hufford, director of government and regulatory affairs for Talisman Energy USA Inc. "We all need to recognize that."

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THE POLITICS AND BUSINESS OF CLIMATE CHANGE

4. REGULATION:

API asserts EPA gasoline rule will raise costs, CO2 emissions

Julia Pyper, E&E reporter

Published: Wednesday, May 8, 2013

The oil and gas industry launched a new complaint yesterday against U.S. EPA's proposed regulation to reduce the sulfur content of gasoline fuel by two-thirds. In a [letter](#) sent to the agency, the American Petroleum Institute (API) argued for greater transparency regarding the controversial "Tier 3" rule.

"Respecting the statutory rulemaking process in this case is particularly important because the proposal is hard to justify and potentially very harmful," Patrick Kelly, API's senior downstream policy adviser, said on a call with reporters. "The massive refinery investments it would require could drive up the cost of making gasoline and weaken the nation's energy security without producing much, if any, environmental benefit."

If enacted, Tier 3 would reduce the sulfur content of gasoline from 30 parts per million today to 10 ppm by 2017 and cut down smog pollution from vehicles. After a delayed release in late March, public health groups and environmentalists are pushing for the rule to be completed by the end of the year.

But API warns that Tier 3 would hit the oil industry with \$10 billion in new capital costs and could increase the marginal cost of making gasoline by between 6 and 9 cents per gallon. This could put some refiners out of business and increase reliance on foreign oil, Kelly said.

API is now calling for EPA to allow a 90-day public comment period and hold another public hearing once the rule is published in the *Federal Register* so that regulated parties have a "reasonable" amount of time to review the material. The American Fuel & Petrochemical Manufacturers launched a similar complaint on the rushed rulemaking process in March.

Tier 3 isn't the industry's only concern, Kelly added. EPA is also considering costly gasoline vapor reductions, increasingly burdensome renewable fuel standard requirements and a "tsunami" of other possible rules targeting ozone, source performance standards and greenhouse gases, he said.

"Refineries and their products are already heavily regulated," said Kelly. "These regulations are contributing to a cleaner environment and safer workplace, but unnecessary, inefficient and excessively costly requirements hamper our ability to provide and distribute fuels to America, while also employing hundreds of thousands of people and enhancing our national security."

Automaker says low sulfur helps fuel efficiency

EPA has held two public hearings on the Tier 3 rule to date, which saw a diverse set of stakeholders unite in support of the regulation.

"The oil industry is arguing about process because it can't win on substance," wrote Meghan Higgins, senior representative on clean fuels with the Union of Concerned Scientists, in an email.

"These standards are about saving lives, cleaning the air, and creating jobs," she said. "That is why they are supported by health groups, labor organizations, the environmental and faith communities, the auto industry, and state and local officials, among others. Despite its fear-mongering, the oil industry stands alone in its opposition to the Tier 3 program."

The automotive industry, which has opposed EPA pollution regulations in the past, is one of the strongest supporters of Tier 3.

Burning gasoline with a higher sulfur content creates a byproduct that reduces the effectiveness of catalytic converters and causes vehicles to produce more emissions. Low-sulfur fuel, which is already available in California and other parts of the world, allows automakers to use converters that can capture pollutants more effectively. According to the National Association of Clean Air Agencies, running today's vehicle fleet on Tier 3 gasoline has the same emissions impact as taking 33 million vehicles running on Tier 2 gasoline off the road.

Automobiles also have to use more fuel to burn off sulfur during the driving cycle, which affects a vehicle's overall fuel economy. At an EPA hearing in Philadelphia last month, Michael Stanton, president and CEO of Global Automakers, said Tier 3 is critical for the auto industry to meet stringent new fuel economy standards.

"In addition to needing ultra-low-sulfur fuel to achieve the Tier 3 emission standards, ultra-low-sulfur fuel is also critical to automobile manufacturer efforts to meet the combined 54.5 mpg fuel economy and greenhouse gas emissions standard by 2025," he said.

Meanwhile, API's Kelly warned that Tier 3 standards could increase carbon dioxide emissions at refineries because of the energy-intensive hydro treating process needed to reduce sulfur levels in gasoline.

Health vs. CO2 emissions?

"I think it's disingenuous for [the oil and gas industry] to bring up greenhouse gases when they've fought greenhouse gas regulations for years," said Frank O'Donnell, president of Clean Air Watch. "I think it's laughable."

O'Donnell argued that the benefits from reducing tailpipe emissions would outweigh any modest emissions increase from refineries. Even more critically, Tier 3 standards will have a direct and positive impact on American's health, he said.

According to a Clean Air Watch [analysis](#) released yesterday, the number of areas in violation of the EPA's national ozone standard today is much greater than when the agency created its official list of "nonattainment" areas based on monitors from 2008 to 2010.

"Many more areas and many more monitors have shown up with dirty air in the last couple of years," said O'Donnell. The older records "create a false sense that things are better than they are based on more recent data."

According to EPA, the Tier 3 standard could prevent up to 2,400 premature deaths and 23,000 cases of respiratory ailments by 2030.

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Daily News

Facing Hurdles, Backers Step Up Push To Maintain SRF Funds In FY14

Posted: May 7, 2013

Congressional and other supporters of EPA's water infrastructure loan programs are urging appropriators to maintain level funding for the programs in fiscal year 2014, and prevent rescissions of unobligated funds, after EPA proposed cutting the funds and a key appropriator downplayed the relative benefits of the funding increase being sought.

State and water industry groups, as well as a bipartisan group of House lawmakers, have separately written to House appropriators urging them to restore funding in EPA's clean water and drinking water state revolving fund (SRF) programs to funding levels in prior years due to the programs' broad economic and environmental benefits.

The state and water industry groups argued in [an April 25 joint statement to appropriators](#) that cutting funds from the program as the administration is proposing harms municipalities and ratepayers, limits leveraging of additional state and local funds and undercuts the federal partnership with state and local governments.

"Considering the importance of water and wastewater infrastructure to the well-being of the American people and to our economy, it is critical that the federal government remains a reliable partner in meeting the nation's clean water and safe drinking water needs," the statement says.

"While the amount we are requesting for the SRF programs is still far below the well-documented clean and safe water infrastructure needs, it is nonetheless an amount that will allow critical water quality projects to move forward nationwide," it adds.

The statement was signed by the American Public Works Association, American Water Works Association, Association of Clean Water Administrators, Association of Metropolitan Water Agencies, Association of State Drinking Water Administrators, Council of Infrastructure Financing Authorities, National Association of Clean Water Agencies and Water Environment Federation.

The push to retain the funds comes in response to the administration's proposal to cut \$472 million from the two funds in FY14. The SRF cuts are being used largely to increase funding on core programs at the agency, though it comes at a time when EPA and many states are seeing a rising need for water infrastructure funds.

Drinking and clean water SRFs combined were funded at \$2.385 billion in FY12 -- \$1.45 billion and \$918 million, respectively. The proposed budget would reduce the total to \$1.912 billion -- \$1.095 billion for clean water and \$817 million.

At an April 24 hearing, Sen. Jack Reed (D-RI), chairman of the Senate interior appropriations panel that funds EPA, warned that the proposed funding cut will limit Senate Democrats' bargaining power with the Republican House as Congress debates an FY14 budget.

"This is the fourth year in a row that the agency's budget request has contracted, which makes it difficult for this subcommittee to hold the line on an EPA budget when the final bills are enacted," he said.

"Your own estimates suggest that in the next 20 years we as a nation are going to have to spend about \$633 billion on infrastructure . . . How do you justify the discrepancy between the huge cuts in this program and huge needs, obvious needs, for infrastructure investment and also the need for jobs?" Reed asked EPA Acting Administrator Bob Perciasepe.

Reed's House counterpart, Rep. Mike Simpson (R-ID), has acknowledged the massive water infrastructure funding needs. But during an April 16 hearing, he downplayed suggestions that funding EPA's SRF programs at FY12 funding levels will make a big difference given the funding needs and suggested that finding the additional funds will be difficult given his subcommittee's overall allocation.

"There's been a suggestion that it would take \$55 billion a year to start addressing the [water] infrastructure backlog -- our entire budget in the interior subcommittee is \$28.5 billion," Simpson said.

The SRF funding issue could be a focus of a May 8 House Appropriations Committee interior panel hearing May 8 on the agency's FY14 budget request, where Perciasepe is slated to testify on EPA's behalf.

Water Infrastructure Needs

But the bipartisan group of 55 House lawmakers told Simpson and Rep. James Moran (D-VA), the ranking Democrat on the House interior appropriations panel, in [an April 18 letter](#) that while water infrastructure needs "far surpass feasible levels of funding through the annual appropriations process," it is still essential to fully fund the SRF programs.

"The Clean Water and Drinking Water SRFs remain key tools for pollution prevention, economic growth and public health and therefore we urge you to maintain critical funding levels to support this work across the country," says the letter, which was led by Reps. James McGovern (D-MA) and Peter King (R-NY).

The lawmakers also urged Simpson not to rescind previously appropriated SRF funds that states may not yet have spent. "While we understand the difficult fiscal decisions we must make in Washington, we are concerned about rescissions to unobligated balances for these critical programs, especially in light of the overwhelming need for water infrastructure investment," the letter says.

While the House letter to Simpson and Moran did not seek specific funding for the programs in FY14, the state and water industry groups urged the subcommittee to reject the administration's proposed FY14 budget and instead fund the program at FY12 levels.

In addition to seeking increases for the two SRF programs, the state and industry groups also urged appropriators to increase funds for several other EPA water programs. For example, they called on lawmakers to increase funds for the section 106 grant program, which provides money to states for implementing clean water regulatory programs, from \$259 million to \$330 million, and to increase funds for the Public Water Work System Supervision Program from \$109.7 million to \$130 million. "These programs fund solid and needed state jobs, including for example, engineers, permit writers, inspectors, biologists, and compliance assistance officials -- who play critical roles in helping ensure clean and safe water for all Americans," the statement says.

The groups also called on appropriators to maintain the administration's requested level of \$164.5 million for EPA's section 319 grant program, which provides grants to states to address nonpoint source pollution, though the statement notes that the National Association of Conservation Districts estimates needs of \$227 million.

In addition, a separate bipartisan group of lawmakers representing states in the Great Lakes region is calling on Simpson and Moran to provide the \$300 million in funding for the Great Lakes Restoration Initiative that the administration requested in FY14.

"The Lakes have struggled with invasive species, toxic chemical contamination, habitat loss, and beach closures. We must do everything we can to protect the Great Lakes and combat these clear and present threats," [the 38 lawmakers write in a recent letter](#). -- *Amanda Palleschi* (apalleschi@iwppnews.com)

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